IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 161 OF 2007.

M/s.Bharat Petroleum Corporation Limited, having its registered office at Bharat Bhavan, 4 & 6, Currimbhoy REoad, Ballard Estate, Mumbai 400 001. ... Applicant.

Versus.

1. Anil Noel Rodriques,
2. Ajit Joseph Rodriques,
3. Prashant Antony rodriques,
   C/o. Mr.Aloysius Rodriques,
   133, Dr.Monte Park Road,
   Bandra, Mumbai 400 050. ... Respondents.

Shri S.G.Page with Shri S.R.Page for the Applicant.

Shri A.Y.Sakhare, Senior Counsel with Shri Ema Almeida for the Respondent No.1.

Shri V.T.Walavalkar, with Shri A.K.Gupta for Respondent No.2.

Shri Nusrat Shah with Shri Victor Almeida for Respondent No.3.

CORAM : ABHAY S.OKA, J.

DATED : 26th April, 2007.

ORAL JUDGMENT.:

1. Submissions of the learned Counsel appearing for the parties were heard yesterday. The challenge by the Applicant (original Defendant) is to the decree passed by the Court of Small Causes for eviction and the confirmation thereof by the Appellate Bench of the Court of Small Causes.

2. It will be necessary to refer to the facts of the case in brief. The predecessors of the Respondents (original Plaintiffs) by an indenture of lease dated 12th October 1954 let out the property bearing Final Plot No.753 of Bandra Town Planning Scheme No.III at Bandra, Mumbai, in favour of M/s.Burmah Shell Oil Storage and Distributing Company Ltd. The lease was for a period of 20 years. In the lease there was an option to renew the same for a further period of 20 years by giving a written notice in that behalf six months prior to the expiry of the lease period. On 19th October 1974, the landlords called upon the said company to hand over possession of the property the subject matter of the lease. On 23rd October 1974, the company conveyed its willingness to renew the period of lease for a further period of 20 years. There was a correspondence between the company and the landlords as regards the extension of the lease.

2. The Respondents filed a suit in the year 1975 in the Court of Small Causes for possession of the suit premises on the ground of bonafide requirement for construction of a new building under the provisions of the Bombay Rents Hotel and Lodging House Rates (Control) Act, 1947 (hereinafter referred to as the said Act of 1947). During the pendency of the suit the Burmah Shell (Acquisition of Undertakings in India) Act, 1976 was

brought into force. In view of the provisions of the said Act, the right, title and interest of the said company in relation to the undertakings in India stood transferred and vested in the Central Government. The said transfer took place by operation of law on 24th January 1976. On the very day the Government of India issued a notification under section 7 of the said Act of 1976 and therefore a fresh certificate of incorporation was issued under the Companies Act, 1956 effecting the change in the name of the Government Company from M/s.Burmah Shell Oil Storage and Distribution Co.Ltd. to that of M/s.Bharat Refineries Ltd. In the meanwhile the suit in the Small Causes Court proceeded. A decree was passed by the Court of Small Causes. The decree was challenged by the Applicant by way of preferring an Appeal. The Appeal was dismissed. A writ petition under Article 227 of the Constitution of India was filed by the Applicant for challenging the decree for possession. The Writ Petition has been admitted for hearing and by way of interim relief an order of status-quo has been passed.

3. After coming into force of the Maharashtra Rent Control Act, 1999 (hereinafter referred to as the said Act of 1999) a notice of termination of tenancy dated 14th June 2001 was issued by the Advocate for the Respondents to the Applicant. On the basis of the said

notice, a fresh suit for eviction was filed by the Respondents on the ground that the protection of Maharashtra Rent Control Act of 1999 was not available to the Revision Applicant in view of section 3(1)(b) of the said Act of 1999. The said suit was decreed. An Appeal preferred by the Applicant against the said suit has been dismissed and the present Revision Application is filed by the Applicant for challenging the decree for possession passed in the said second suit. The first submission made by the learned Counsel for the Applicant is that during the pendency of the earlier writ petition filed by the Applicant and during the subsistence of the interim order passed by this Court, the second suit filed by the Applicant could not have been entertained and decided. He submitted that the decree for possession in respect of the same suit property which was passed in the earlier suit has been stayed by this Court.

4. His second submission is based on the provisions of the said Act of 1976 and in particular sub-section (2) of section 5 thereof. The submission is that after expiry of the extended period of lease in the year 1994, in view of sub-section (2) of section 5 of the said Act of 1976, the Applicant is entitled to further renewal/ extension of 20 years. The learned Counsel for Applicant placed reliance on a decision of the Apex

Court in the case of Bharat Petroleum Corporation Ltd. v/s. P.Kesavan and another (AIR 2004 SC 2206).

5. The learned Counsel appearing for the 1st, 2nd and 3rd Respondents have supported the impugned Judgments and decrees. They have also placed reliance on various decisions of this Court.

6. I have carefully considered the submissions. In so far as the first submission is concerned, I find that there is no merit in the said submission in view of the decision of this Court in the case of Godrej & Boyce Manufacturing Co.Ltd. v/s. Sridhar Jagannath Nerurkar (2005(1) Rent Control Reporter, page 279). A similar contention was raised in the said case and the learned Single Judge has dealt with the said contention by holding that when a suit is filed under the said Act of 1947 and when during the pendency of the said suit, the said Act of 1999 came into force, the pending suit will continue under the old Act i.e. the said Act of 1947 and the landlord can always file a fresh suit for eviction against the tenant under the general law. The said view was taken as after coming into force of the said Act of 1999, the Petitioner-tenant ceased to have protection of the said Act of 1999 in view of section 3(1)(b) thereof. In an another decision of the learned Single Judge of this Court in Civil Revision Application

No.1191 of 2001 in the case of Dilip Prabhakar Dingorkar v/s. Hindustan Petroleum Corporation Ltd. the learned Single Judge was dealing with the question whether it was necessary to stay the hearing of the subsequent suit for eviction filed by the landlord under the general law, when a petition arising out of final order passed in an earlier suit for eviction filed by the landlord was pending in this Court. Relying upon section 3(1) of the said Act of 1999, in paragraph 19 of the said decision, the learned Single Judge held thus:

> "Even if for the sake of argument, a situation is conceived where the Petitioner fails to establish his bonafide requirement in the prior suit, he will still be entitled to file and institute a suit for eviction on the basis of the provisions of the Maharashtra Rent Control Act, 1999 since the matter which directly and substantially arises in the later suit is distinct and separate."

7. In the present case, the second suit was filed on the basis of the termination of tenancy made by issuing a notice under section 106 of the Transfer of Property Act, 1882. After the repeal of the said Act of 1947, the Applicant is not protected by any rent control legislation, and therefore, the second suit for eviction

was filed under the general law on the basis of the termination of tenancy under section 106 read with section 111 of the said Act of 1882. Thus there is no merit in the first contention that the suit filed by the Respondents was not maintainable.

8. Reliance is placed on section 5 of the said Act of 1976, which reads thus:

> "5. **Central Government to be lessee or tenant under certain circumstances. -** (1) Where any property is held in India by Burmah Shell under any lease or under any right of tenancy, the Central Government shall, on and from the appointed day, be deemed to have become the lessee or tenant, as the case may be, in respect of such property as if the lease or tenancy in relation to such property had been granted to the Central Government, and thereupon all the rights under such lease or tenancy shall be deemed to have been transferred to, and vested in, the Central Government.
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> (2) On the expiry of the term of any lease or tenancy referred to in sub-section (1), such lease or tenancy shall, if so desired by

> the Central Government, be renewed on the same terms and conditions on which the lease or tenancy was held by Burmah Shell immediately before the appointed day."

Under sub-section (2) it is provided that on expiry of the term of any lease or tenancy referred to in sub-section (1), such lease or tenancy shall, if so desired by the Central Government, be renewed on the same terms and conditions on which the lease or tenancy was held Burmah Shell immediately before the appointed day. Turning to the facts of the present case, the lease period of 20 years expired in the year 1974 and in the year 1974, an option to renew the lease for a further period of 20 years was exercised. Thus immediately before the appointed day under the said Act of 1976, the Burmah Shell Company was not having any further option to renew the lease as the only option of renewal under the lease was already exercised before the appointed date. Reliance is placed on the decision of the Apex Court in the case of Bharat Petroleum Corporation Ltd.V/s. P.Kesavan and another (AIR 2004 SC 2206). It must be borne in mind that the Apex Court in the said case was dealing with a lease executed in the year 1967. In the facts before the Apex Court on the appointed day i.e. 24th January 1976, the period of the original lease was not expired. Therefore, before the

appointed day Burmah Shell Company had an option to renew the period of lease as provided in the document of lease. In the context of the said factual matrix, in view of sub-section (2) of section 5 of the said Act of 1976, the Apex Court held that the successor Bharat Petroleum Company Ltd. had a statutory right to seek further renewal of the lease in terms of the document of lease. As pointed out earlier, in the present case only one option was available under the lease which was already exercised by the Applicant before the appointed day. Sub-section 2 of section 5 of the said Act of 1976 does not confer a right to exercise one more option of renewal of lease which was not provided for in the terms of the original lease. Only in those cases where the only available option for renewal is not exercised before the appointed day, the sub-section 2 confers a right to avail of the said option. Hence there is no merit in the second submission.

9. There is no dispute about the legality and validity of the notice of termination and service thereof to the Applicant. There is no merit in the Revision and the same is rejected.

10. The learned Counsel for the Applicant prays that the decree for possession shall not be executed for a reasonable period to enable the Applicant to approach

the Apex Court. The said request is opposed by the learned Counsel appearing for the Respondents. Considering the facts and circumstances of the case, decree for possession shall not be executed till 31st August 2007.

Judge.